

THE MARK O. HATFIELD

# COURTHOUSE NEWS

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A Summary of Topical Highlights from decisions of the  
U.S. District Court for the District of Oregon  
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## First Amendment

Plaintiff, a member of the Oregon bar, was elected to the bar's Board of Governors while he had a disciplinary complaint under investigation. Because the BOG oversees some of the bar entities involved in the disciplinary process, the BOG considered policy issues that arise when one of its members faces a disciplinary charge. This resulted in the BOG enacting a bylaw which suspends members of the BOG and of some of the committees involved in the disciplinary process until the charges are resolved. The new bylaw caused the immediate suspension of plaintiff from his BOG position. Plaintiff contended that the bylaw violated his free speech rights and was passed in retaliation for his exercise of those rights. Judge King granted summary judgment against plaintiff's remaining First Amendment and defamation claims.

Paulson v. Carter,  
CV 04-1501-KI

(Opinion, Feb. 16, 2006)  
Plaintiff's Counsel: Lauren Paulson  
Defense Counsel: Susan Eggum

## Due Process/ ADA

Plaintiff filed a wrongful termination lawsuit against the United States Marshals Service. Before Judge Aiken were plaintiff's claims for violation of the Age Discrimination Act and a due process claim. Defendants filed a motion to dismiss, or in the alternative for summary judgment.

Regarding plaintiff's due process claim, the court ruled that plaintiff's claim was barred by res judicata and granted defendants' motion to dismiss. Regarding plaintiff's Rehabilitation Act claim, the court denied defendants' motion to dismiss finding that res judicata does not apply to that claim, nor does failure to exhaust administrative remedies.

Lloyd v. U.S. Marshals Service,  
et al., CV 05-3032-AA

(Opinion, Feb. 15, 2006)  
Plaintiff's Counsel: Robert Huntley  
Defense Counsel: James Sutherland

## COGSA

The controversy arose out of the capsizing of a barge during container discharge operations at the Port of Portland, causing the loss of cargo. The cargo had been loaded by stevedores of the Port of Lewiston. As allowed by statute and the rules, the plaintiff Tidewater ("carrier") sought exoneration from or limitation of liability for the losses caused by the capsizing. Opposing Tidewater were numerous shippers who suffered losses to their interests in cargo. One of the shippers, CP Ships, had contracted with the Port of Lewiston to conduct the loading, stowing and securing of the cargo.

In an affirmative defense, Tidewater tried to shift responsibility for loading,

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stowing and securing the cargo pursuant to the terms of its freight tariff and bills of lading with shippers. CP Ships filed a motion against Tidewater's defense on the basis that exculpatory provisions in the freight tariff were null and void under the Carriage of Goods by Sea Act, 46 USC app §§ 1300 *et seq* (2000) ("COGSA"). Under COGSA, a carrier has a duty to exercise due diligence before and at the beginning of a voyage to make the ship seaworthy, as well as the duty to load and discharge the goods carried, and cannot release itself from liability for its own negligence or for negligence by its agents or servants. 46 USC app §§ 1303(1), (2), & (8).

Magistrate Judge Stewart found that a provision in a freight tariff which shifts responsibility for loading and unloading from the carrier to the shipper does not violate COGSA if the carrier is without actual fault. However, if the carrier is at fault for any damage caused by improper loading or unloading, then a limitation clause in the bill of lading will not relieve the carrier from liability. The party who is liable for the stevedore's negligence depends on who hired and controlled the stevedore. Tidewater Bargelines, Inc., et al. v. Fortis Corp. Ins. et al., CV 03-1225-ST (Findings and Recommendation, Nov. 30, 2005, adopted by Judge King on Jan. 3, 2006)

Plaintiffs' Counsel: C. Kent Roberts  
Defense Counsel: Robert Sanders

## Employment

Former employees sued State Farm alleging breach of contract and tortious breach of the implied covenant of good faith and fair dealing, and defendants moved for summary judgment. Judge Aiken granted defendants' motion. Plaintiffs were terminated or demoted for violating State Farm's e-mail policy, and claimed that their termination and demotion breached their employment agreements. Defendants moved for summary judgment on grounds that plaintiffs were at-will employees and that no employment contract existed between the parties. In response, plaintiffs argued that an express or implied employment contract existed that modified the at-will employment relationship. That contract, they argued, was based upon the policies and procedures found in the companies' employee code, the practices of defendants, and the subjective expectations of the parties. The court held that the terms of the company code did not alter the at-will employment relationship, and that the plaintiffs had failed to present evidence that company policy or

practices changed the at-will relationship. On the tortious breach claim, the court held that the plaintiffs had failed to establish that their relationship with their employer was a "special relationship" from which duties independent of the contract arose. Because a special relationship is an essential element of a tortious breach claim, defendant's summary judgment motion was granted.

Schukart v. State Farm,  
CV 04-6242-AA

(Opinion, Feb. 23, 2006)  
Plaintiffs' Counsel: Sharon Stevens

Defense Counsel: Clay Creps